



TOWN OF ACTON
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Planning Department

January 4, 2007

Notice of Public Hearing on Proposed Zoning Changes

Please publish the following as a LEGAL NOTICE on **January 18, 2007** and **January 25, 2007**.

Acton Planning Board public hearing - 2/13/07, 8:15 PM, Acton Memorial Library, on proposed zoning bylaw changes: (1) Section 6.7 – new flexible parking lot design. (2) Section 8.3 – allow demolitions and replacements of structures on nonconforming lots. (3) Section 3.10 – amend wireless communications facilities regulations. (4) Section 3 – remove owner-occupancy requirement. (5) Citizen Petition: Section 3 – prohibit wireless communication facilities in residential districts and within 1000 feet of certain school and municipal properties. Agricultural operations will not be impacted. Proposals are available at the Planning Dept. and Town Clerk.

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ARTICLE ZA
(Two-thirds vote)

FLEXIBLE PARKING LOT DESIGN

To see if the Town will vote to amend the Zoning Bylaw as follows:

- A. In section 6.7, which sets forth standard parking lot design requirements, insert a new section 6.7.9 as follows:

6.7.9 Flexible Parking Lot Design Requirements – A Special Permit or Site Plan Special Permit Granting Authority having jurisdiction, or the Building Commissioner in cases where no special permit is required, may waive any and all requirements of sections 6.7.1, 6.7.2, 6.7.5 thru 6.7.8, and 10.4.3.5 of this Bylaw, including their subsections, subject to the following requirements, conditions, and findings:

- 6.7.9.1 The special permit or site plan special permit application shall contain a Parking Proof Plan, prepared and stamped by a Registered Professional Engineer, drawn to sufficient detail to demonstrate compliance with all applicable local, State, and Federal laws and regulations, including this Bylaw without the benefit of this section 6.9. The Parking Proof Plan shall show the number of proposed parking spaces and identify the total area of impervious paved surface, parking lot landscaping, and OPEN SPACE on the LOT.
- 6.7.9.2 The special permit or site plan special permit application shall contain a Flexible Parking Plan, prepared and stamped by a Registered Professional Engineer, showing the same number of parking spaces as on the Parking Proof Plan and a parking lot layout that differs in whole or in part from the requirements of sections 6.7.1, 6.7.2, 6.7.5 thru 6.7.8, and 10.4.3.5. The Flexible Parking Plan shall include sufficient detail, including drainage system details, to demonstrate compliance with all other applicable local, State, and Federal laws and regulations, and it shall identify the total area of impervious paved surface, parking lot landscaping, and OPEN SPACE on the LOT. The Flexible Parking Plan shall be submitted with a list of waivers from the stated sections of this Bylaw and supporting materials detailing why the Flexible Parking Plan is more advantageous for the site; better protects the neighbors including abutting residential properties; is more conservative in its use of natural resources; and overall would be in the better interest of the Town of Acton as compared to the Parking Proof Plan.
- 6.7.9.3 In cases where a special permit or site plan special permit is not required, the Parking Proof Plan and Flexible Parking Plan shall be submitted to the Building Commissioner.
- 6.7.9.4 The Flexible Parking Plan shall comply with the following minimum standards:
- a) Except for access driveways all parking spaces and paved surfaces shall be set back a minimum of ten feet from any LOT line.
 - b) The landscaping of the parking lots shall as a minimum comply with section 6.9.4.7 including subsections a) through e).
- 6.7.9.5 The Special Permit or Site Plan Special Permit Granting Authority, or the Building Commissioner where no special permit is required, may at their sole discretion approve the Flexible Parking Plan if they can find and determine that the Flexible Parking Plan is superior to the Parking Proof Plan and provides a substantial public benefit.

B. In section 10.4, Site Plan Special Permit, insert under section 10.4.3.6 the following subsection 3):

- 3) See also section 6.7.9 for Flexible Parking Plans and potential waivers from this section 10.4.3.6.

, or take any other action relative thereto.

SUMMARY

The zoning bylaw determines in a detailed manner the layout, design, and landscaping of parking lots in Acton. This zoning bylaw amendment would provide for an optional flexible design approach in most zoning districts. The number of parking spaces that can fit in a given area would be determined by way of a proof plan that is in compliance with the detailed standard design requirements. The same number of parking spaces may then be arranged in a different layout and pattern, subject to minimum performance standards for setbacks and landscaping that currently apply in some of Acton's village districts. The result of flexible parking design can be the more conservative use of land and natural resources, more contiguous open space, less impervious pavement coverage, less storm water runoff, and more flexibility to design a parking lot that is context sensitive and potentially more responsive to the needs of the abutters, the neighborhood, and the Town.

Direct inquiries to: Roland Bartl, Town Planner – (978) 264-9636; planning@acton-ma.gov
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Board of Selectmen:

Finance Committee:

Planning Board:

ARTICLE ZB
(Two-thirds vote)

**TEAR-DOWNS AND REPLACEMENTS
OF HOMES ON UNDERSIZED LOTS**

To see if the Town will vote to amend the Zoning Bylaw, section 8.3 – Nonconforming Structures, by inserting a new section 8.3.6 as follows:

8.3.6 Replacement – A STRUCTURE in residential USE on a nonconforming LOT, that cannot be built on under the requirements of Section 8.1, may be razed and rebuilt for residential USE subject to the following conditions and limitations:

8.3.6.1 A replacement shall be limited to the same number of DWELLING UNITS as there were previously existing on the LOT.

8.3.6.2 The replacement STRUCTURE shall meet all minimum yard and maximum height requirements as they apply to the LOT at the time of the special permit application.

8.3.6.3 The replacement STRUCTURE shall not exceed the foot print of the previous STRUCTURE on the LOT by more than 25%.

8.3.6.4 The replacement STRUCTURE shall not exceed the NET FLOOR AREA of the previous STRUCTURE on the LOT by more than 50 percent.

, or take any other action relative thereto.

SUMMARY

This article would amend the zoning bylaw to allow the tear-down and replacement of residential structures on lots that are nonconforming due to insufficient frontage or area. The zoning bylaw allows the restoration of structures on such lots after fire or other damage has destroyed less than 50% of their value. But, it does not currently allow the intentional demolition and rebuilding of structures on nonconforming lots. Since 2000, the Board of Appeals heard seven variance petitions to allow such replacements. Six variances were granted. The cases varied. The replacement of a septic system required the relocation of a house. One house sustained fire damage that exceeded 50% of its value. Other petitions were by homeowners or builders who simply wanted to replace the existing “low value” structure with a modern home. Looking only at smaller single family homes (less than 1,500 square feet in living area) as the more likely candidates for potential replacements, and evaluating their lots only for area, the Planning Department found 237 such small homes on undersized lots. This represents approximately 4% of Acton’s single family housing stock. The statutory criteria for variances – hardship due to soil conditions, shape, or topography – do not strictly apply to most of these situations. Insufficient frontage or area by themselves cannot be considered hardship. This article would remove the zoning bylaw’s barrier against demolition and replacement of residential structures on nonconforming lots, some of which may fall into disrepair after years of estate ownership and abandonment, become an eyesore in the neighborhood, and pose a safety hazard. The proposed zoning bylaw change includes certain conditions and limitations on the replacement structures to ensure that they are for residential purposes, and that their size and bulk will be reasonably compatible within the context of established neighborhoods.

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ARTICLE ZC
(Two-thirds vote)

**WIRELESS COMMUNICATION FACILITIES
AMENDMENTS**

To see if the Town will vote to amend the Zoning Bylaw, section 3.10 – Wireless Communication Facilities, as follows:

A. In section 3.10.6, insert new sub-sections 3.10.6.2 and 3.10.6.3 as follows:

3.10.6.2 Wireless Communication Facility towers shall be single monopoles with internal or flush-mounted transmission equipment, also known as stealth monopoles. On a case by case basis, the Planning Board may allow monopoles with externally mounted equipment arrays.

3.10.6.3 Wireless Communication Facility towers shall be located, designed, and constructed to support a final height of 175 feet full loaded with wireless service transmitters and equipment in the top half.

And, renumber existing sub-sections 3.10.6.2 through 3.10.6.9 to become sub-sections 3.10.6.4 through 3.10.6.11 respectively.

B. In section 3.10.6.5 (renumbered to 3.10.6.7 in A. above), insert a new sub-section e) as follows:

e) The Planning Board may require long-term easements, leases, licenses, or other enforceable legal instruments that fully support a Wireless Communications Facility at its maximum potential technical capacity, including sufficient space for facility base equipment, adequate access and utility easements to the facility from a public STREET, and the right for all telecommunication service providers to co-locate on the facility and to upgrade the utilities and equipment as needed for maintaining and improving service and capacity.

C. In section 3.10.6.7 (renumbered to 3.10.6.9 in A. above), delete the word “vegetation” and replace it with “foliage”.

[Note: The relevant sentence in section 3.10.6.7 currently states: The application shall also include maps showing areas where the proposed top of the Wireless Communication Facility will be visible when there is vegetation and when there is not.]

D. In section 3.10.6.9 (renumbered to 3.10.6.11 in A. above), delete sub-section a), and renumber current subsections b) through j) to become sub-sections a) through i) respectively.

[Note: Section 3.10.9.6 sets forth mandatory findings that the Planning Board as the Special Permit Granting Authority for Wireless Telecommunication Facilities must make in the affirmative when granting special permits. In the current sub-section a) the required finding is that the facility “is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in M.G.L. c. 40A, s.11”.]

, or take any other action relative thereto.

SUMMARY

This article would make several amendments to the existing regulations in the zoning bylaw for wireless communication facilities, which includes cell towers. The amendments reflect lessons learned since the adoption of special permit standards for cell towers in the late 1990’s. The original adoption of these standards came in response to the Federal Telecommunications Act of 1996,

which, in summary, requires that Towns allow seamless mobile communications in a competitive market place. Towns may regulate cell towers to minimize their aesthetic effects, but cannot prohibit them or thwart the Federal law's intent for seamless mobile communication.

Part A of this article states a preference for "stealth monopoles" without externally mounted equipment, while retaining the discretion for the Planning Board, as the special permit granting authority, to allow external mounting in some cases, such as in remote locations or for small equipment installed for Town agency use. Stealth monopoles have proven to be the least noticeable type of tower.

The zoning bylaw limits the height of cell towers to 175 feet. Part A also contains an amendment that specifies that every tower must be sited and built to eventually support the maximum allowed height of 175 feet. This ensures that approved towers can be used to their maximum capacity allowed under the bylaw. The specified height usually allows all regional and national mobile phone operators to co-locate on a tower with effective signal transmission above the tree line. Every mobile phone service provider occupies a certain amount of vertical space on a tower. Sufficient tower height enlarges signal coverage areas and allows for co-location of service providers as tenants on the same tower. The trade-off is between fewer taller towers as currently allowed in the zoning bylaw, or a greater number of shorter single occupancy towers.

Part B aims to secure maximum utility of an approved tower location by requiring that all rights and easements are in place for all operators to locate on the tower, giving them access, and allowing unlimited technical and capacity upgrades.

Part C clarifies the intent of the bylaw to require a visual survey for visibility conditions in both winter and summer months.

Part D would delete one of ten findings that the Planning Board must make to grant a special permit. The subject finding, that the facility is "*is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in M.G.L. c. 40A, s.11*" is too subjective and without measurable criteria to be a helpful decision making tool. The general special permit findings of section 10.3.5 still apply, which include a finding that the proposed use will not be detrimental or injurious to the neighborhood in which it is to take place.

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ARTICLE ZD
(Two-thirds vote)

**REMOVAL OF OWNER OCCUPANCY REQUIREMENT
FOR MULTI-FAMILY USES**

To see if the Town will vote to amend the Zoning Bylaw, section 3, by deleting the second and third sentence in footnote 3 of the Table of Principal Uses.

[Note: The sentences that are proposed for deletion read as follows:

"At least one of the DWELLING UNITS shall be occupied by the owner of the property. For purposes of this footnote, the owner shall be defined as one or more individuals residing in a DWELLING UNIT who hold legal or beneficial title and for whom the DWELLING UNIT is the primary residence for voting and tax purposes."]

, or take any other action relative thereto.

SUMMARY

This article would eliminate the owner occupancy requirement for multi-family dwellings in West Acton's Village Residential District and in the South Acton Village District. These two zoning districts remain the only two areas where owner occupancy is still required. No such requirement applies in the R-A, R-AA, EAV, EAV-2, or WAV districts where multi-family uses are also allowed, and no owner occupancy requirement applies to single-family homes. The owner-occupancy requirement acts as a barrier to creating rental housing stock and therefore also as a barrier to affordable market-rate rentals. The requirement is also impossible or unrealistic to enforce. The assumption that owner-occupancy brings with it pride in ownership that would ensure well maintained rental properties does not appear to be reflected in reality. There are many investment rental properties in Acton, which for the most part are being kept in decent condition and appearance. On the other hand, there are from time to time owner-occupied properties, including some single family homes that appear neglected, run-down, or abandoned.

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